

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION**

**STATE OF TEXAS, *et al.*, §**  
§  
**Plaintiffs §**  
§  
**vs. § CIVIL ACTION NO. 1:18-cv-00068**  
§  
**UNITED STATES OF AMERICA, *et al.*, §**  
§  
**Defendants, §**  
§  
**KARLA PEREZ, *et al.*, §**  
§  
**Defendants-Intervenors, §**  
§

**BRIEF OF 114 COMPANIES AND ASSOCIATIONS AS *AMICI CURIAE* IN SUPPORT  
OF DEFENDANTS-INTERVENORS AND IN OPPOSITION TO PLAINTIFFS'  
MOTION FOR A PRELIMINARY INJUNCTION**

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## **INTEREST OF *AMICI CURIAE***

*Amici* are 114 U.S. companies and associations that collectively contribute trillions of dollars in annual revenue to the American economy. Many *amici* employ Dreamers—the young people who, under the Deferred Action for Childhood Arrivals (DACA), are able to live and work in the country that has been their home for most of their lives. In addition, *amici*'s customers and end users are Dreamers; and *amici*'s businesses benefit from Dreamers' contributions to the overall economy through their tax payments, spending, and investments. Accordingly, *amici* have a strong interest in Dreamers' continued ability to work and participate in our country's economy and in society generally. A list of the *amici* is set forth in the Appendix.

## **INTRODUCTION**

The intangible benefits of DACA are undeniable and substantial: nearly 800,000 individuals (Dreamers) who “were brought to this country as children and know only this country as home” could for the first time live in America and participate fully in all aspects of our society without the constant and crippling fear of deportation. Mem. from Janet Napolitano to David V. Aguilar Regarding Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children (June 15, 2012) (“DACA Memorandum”). DACA is a concrete and essential example of America fulfilling its centuries-old promise to welcome people from around the world seeking a better and a freer life. And no group is more deserving of that welcome than the Dreamers.

In addition to these invaluable intangible benefits, DACA has produced—and is continuing to produce—important benefits for America's companies and for our economy as a whole. Most notably, thanks to longstanding regulations governing the employment of immigrants, Dreamers who have obtained deferred action under DACA may apply for work

authorization, and thereafter obtain jobs. Employment of Dreamers expands work opportunities for everyone, because employment is not a zero-sum game. Dreamers are filling vacancies at companies that cannot find enough workers to fill their needs. And Dreamers' wages lead to higher tax revenues and expansion of our national GDP—producing new jobs for all Americans.

Enjoining DACA will inflict serious harm on U.S. companies, all workers, and the American economy as a whole. Every day DACA is enjoined, approximately 1,700 people will lose their jobs—which in turn translates into lost productivity and revenue for companies, lost tax revenue for governments, and broader economic contraction. But those dire consequence should never come to fruition because plaintiffs cannot show a likelihood of success on the merits of their claims—certainly not enough to justify the enormous harm a preliminary injunction would cause to the public interest. DACA closely resembles deferred action programs adopted in the past and complies fully with the applicable statutes.

## ARGUMENT

### **I. ENJOINING DACA WOULD INFILCT IMMENSE AND IRREPARABLE HARM ON U.S. COMPANIES AND THE U.S. ECONOMY AS A WHOLE.**

Since the nation's founding, immigrants have been an integral part of the fabric of our country, enhancing the lives and prosperity of all Americans. Immigrants' contributions to the U.S. economy are well-recognized: For example, companies founded by immigrants or their children generate over \$4.8 trillion in annual revenue,<sup>1</sup> and employ approximately one in 10 American workers.<sup>2</sup>

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<sup>1</sup> New Am. Economy, *Reason for Reform: Entrepreneurship* 2, 6-7 (Oct. 2016), <https://tinyurl.com/y784raj8>.

<sup>2</sup> P'ship for a New Am. Economy, *Open for Business: How Immigrants Are Driving Small Business Creation in the United States* 12, 14 (Aug. 2012), <https://goo.gl/3mFkVz> (immigrant-owned businesses generate over \$775 billion in revenue and employ one out of every 10 workers)

DACA enabled Dreamers—immigrants who were brought to the U.S. as children—to come out of the shadows, participate in the economy, and contribute to U.S. companies, which benefits all of us. Eliminating DACA harms not only individual Dreamers and their families, friends, and co-workers; but also the many U.S. businesses that count on them to help fuel continued innovation and economic growth.

**A. Dreamers Contribute Directly To Our Nation’s Economic Growth.**

In the over five years since DACA was implemented, Dreamers have become essential contributors to American companies and the American economy. Before DACA, these individuals—who have obtained at least a high school degree and, in many cases, have finished college and graduate school—would have been unable to even seek work authorization, and therefore unable to put their education and skills to use. DACA changed that, and as a result over 91 percent of Dreamers are employed and earn wages commensurate with their skill levels.<sup>3</sup> Permitting Dreamers to stay and work in the country in which they grew up not only benefits those individuals, but also benefits American companies and the American economy as a whole.

*First*, Dreamers directly contribute to the success of numerous U.S. companies. At least 72 percent of the top 25 Fortune 500 companies employ Dreamers—including IBM, Walmart, Apple, General Motors, Amazon, JPMorgan Chase, Home Depot, and Wells Fargo, among others. Those companies alone generate almost \$3 trillion in annual revenue.<sup>4</sup>

Many Dreamers are entrepreneurs who have created their own businesses: According to one survey, five percent of Dreamers started their own businesses after receiving deferred action under DACA. Among those respondents 25 years and older, the figure is nearly eight percent—

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<sup>3</sup> Tom K. Wong *et al.*, *Results from 2017 National DACA Study* 3-4 (“Wong 2017 Results”), <https://goo.gl/nBZdP2>.

<sup>4</sup> Tom K. Wong *et al.*, *DACA Recipients’ Economic and Educational Gains Continue to Grow*, Ctr. for Am. Progress (Aug. 28, 2017) (“Wong DACA Gains”), <https://goo.gl/dYJV1s>.

well above the 3.1 percent for all Americans.<sup>5</sup> These businesses create new jobs and provide goods and services that expand the economy.<sup>6</sup>

*Second*, Dreamers pay taxes to federal, state, and local governments.<sup>7</sup> The Cato Institute estimated that over 10 years, DACA recipients will increase federal tax revenues by approximately \$93 billion;<sup>8</sup> they will contribute many billions more in state and local taxes.<sup>9</sup> These tax dollars help fund public goods like schools, firefighters, roads, and bridges. For example, Dreamers pay approximately \$111 million and \$81 million in property taxes in California and Texas alone, respectively, which is “enough to cover the annual salaries of roughly 1,500 elementary school teachers in each of those states.”<sup>10</sup>

*Third*, Dreamers have used their earnings—and the increased stability and security resulting from their receipt of deferred action—to make purchases and investments that grow our nation’s economy. In 2017, nearly two-thirds of Dreamers reported buying their first car, and almost 16 percent reported purchasing a first home.<sup>11</sup> These and other types of personal consumption expenditures are important drivers of the economy: they “account[] for the largest

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<sup>5</sup> Wong 2017 Results, *supra* n.3, at 3; Wong DACA Gains, *supra* n.4.

<sup>6</sup> See Julia Boorstin, *Illegal Entrepreneurs: Maria Has No U.S. Visa, and Jose’s Expires Soon. Yet They Own a Profitable California Factory, Pay Taxes, and Create Jobs*, CNN MONEY (July 1, 2005), <https://goo.gl/jq2Y1C>.

<sup>7</sup> See Silva Mathema, *Assessing the Economic Impacts of Granting Deferred Action Through DACA and DAPA*, Ctr. for Am. Progress (Apr. 2, 2015), <https://goo.gl/wxxek1>.

<sup>8</sup> Logan Albright *et al.*, *A New Estimate of the Cost of Reversing DACA* 1, Cato Inst. (Feb. 15, 2018), <https://goo.gl/pgNGKi>.

<sup>9</sup> Inst. on Taxation & Economic Policy, *State & Local Tax Contributions of Young Undocumented Immigrants* (Apr. 2018), <https://goo.gl/Kifc9K> (estimating that DACA-eligible immigrants contribute approximately \$2 billion a year in state and local taxes)

<sup>10</sup> Alexander Casey, *An Estimated 123,000 ‘Dreamers’ Own Homes and Pay \$380M in Property Taxes*, Zillow Research (Sept. 20, 2017), <https://goo.gl/SxQzuW>.

<sup>11</sup> Wong 2017 Results, *supra* n.3, at 3.

share of GDP [and] are the main generator of employment in the economy.”<sup>12</sup>

**B. Dreamers Help Grow The Economy By Filling Jobs For Which There Otherwise Would Not Be A Sufficient Supply Of Workers.**

These benefits to the U.S. economy do not come at the expense of U.S.-born workers.

Studies have consistently found that immigrants do not displace U.S.-born workers. They instead help grow the economy and create more opportunities for U.S.-born workers by filling positions that otherwise would remain vacant because of a shortage of qualified workers.<sup>13</sup>

**1. Permitting Dreamers To Participate In The Workforce Increases, Rather Than Reduces, The Number Of Jobs.**

“One of the best-known fallacies in economics” is the “lump of labour fallacy.”<sup>14</sup>

Economists from across the policy and political spectrum have discredited the notion that “there is a fixed amount of work to be done—a lump of labour”—such that an increase in the number of workers reduces the number of available jobs.<sup>15</sup> Rather, the clear reality is that jobs beget more jobs. “When people work for a living, they earn money. They spend that money on goods and services that are produced by other people.”<sup>16</sup> The greater demand for goods and services creates

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<sup>12</sup> Mitra Toossi, *Consumer Spending: An Engine for U.S. Job Growth*, Monthly Labor Rev. 12 (Nov. 2002), <https://goo.gl/iyTkdr>.

<sup>13</sup> See Michael Greenstone & Adam Looney, *What Immigration Means for U.S. Employment and Wages* 1-2, The Hamilton Project (May 4, 2012), <https://goo.gl/bvC7AE>; Kenneth Megan, *Immigration and the Labor Force*, Bipartisan Policy Ctr. (Aug. 25, 2015), <https://goo.gl/8p3SP8>; Michael A. Clemens & Lant Pritchett, *Temporary Work Visas: A Four-Way Win for the Middle Class, Low-Skill Workers, Border Security, and Migrants* 4, Ctr. for Glob. Dev. (Apr. 2013), <https://goo.gl/p9NLuc>.

<sup>14</sup> *Economics A-Z Terms Beginning with L*, THE ECONOMIST, <https://goo.gl/BvRwKU>.

<sup>15</sup> *Id.*; see also Paul Krugman, Opinion, *Lumps of Labor*, N.Y. TIMES (Oct. 7, 2003), <https://goo.gl/GyYTG5>.

<sup>16</sup> Buttonwood, *Keep on Trucking*, THE ECONOMIST (Feb. 11, 2012), <https://goo.gl/x8vqaL>; see also Megan, *supra* n.13 (“[A] breadth of research indicates that immigration can be complementary to native born employment, as it spurs demand for goods and services”); Giovanni Peri, *The Effect of Immigrants on U.S. Employment and Productivity*, Fed. Reserve Bank of San Francisco Econ. Letter (Aug. 30, 2010), <https://goo.gl/jK17fc>.

new jobs.

The facts are indisputable. “From 1970 to 2017, the U.S. labor force doubled. Rather than ending up with a 50 percent unemployment rate, U.S. employment doubled.”<sup>17</sup> Another study showed that countries with high employment levels of older workers also had high employment levels of young workers; in other words, high employment levels in one group benefited the other group, rather than depriving the other of employment opportunities.<sup>18</sup> And yet other studies have shown that increased immigration levels in the U.S. in the past have had largely *positive* impacts on the employment levels and income of U.S.-born workers.<sup>19</sup> For example, one study found that spending by immigrants generated approximately 12,000 jobs in plaintiff Nebraska in one year.<sup>20</sup>

These findings hold true today. The unemployment rate has more than halved since 2012, when DACA was created.<sup>21</sup> The number of total job openings has increased.<sup>22</sup> And studies have found that DACA has not had any significant effect on the wages of U.S.-born workers.<sup>23</sup>

## 2. Dreamers Fill Critical Labor Shortages.

The jobs being filled by Dreamers post-DACA are largely jobs for which there is a shortage of qualified workers—not the jobs that are or could be filled by U.S.-born workers. In a

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<sup>17</sup> David Bier, *Five Myths About DACA*, Cato Inst. (Sept. 7, 2017), <https://goo.gl/y1e8gb>.

<sup>18</sup> Buttonwood, *supra* n.16.

<sup>19</sup> See Jacqueline Varas, *How Immigration Helps U.S. Workers and the Economy*, Am. Action Forum (Mar. 20, 2017), <https://goo.gl/ovHQEh>.

<sup>20</sup> Christopher S. Decker, *Nebraska’s Immigrant Population: Economic and Fiscal Impacts* 1, 23 (2008), <https://tinyurl.com/ybsduws5>.

<sup>21</sup> See Nat’l Conference of State Legislatures, *National Employment Monthly Update* (June 1, 2018) (“NCSL Employment Update”), <https://goo.gl/wZBJh8>.

<sup>22</sup> U.S. Dep’t of Labor, Bureau of Labor Statistics, *Job Openings and Labor Turnover Survey*, <https://goo.gl/g4n9Ag> (last accessed July 18, 2018).

<sup>23</sup> Francesc Ortega *et al.*, *The Economic Effects of Providing Legal Status to DREAMers* 18, IZA Discussion Paper No. 11281 (Jan. 2018), <http://ftp.iza.org/dp11281.pdf>.

recent survey of U.S. employers, 46 percent of respondents reported difficulty filling jobs—particularly in skilled labor positions, such as teachers, accounting and finance staff, nurses, and engineers.<sup>24</sup> Almost a quarter of employers reported a lack of available applicants; another 34 percent cited a shortage of applicants with necessary skills and experience.<sup>25</sup> In 2012, the President’s Council of Advisors on Science and Technology warned that within ten years, the U.S. could face a shortfall of nearly one million professionals in the science, technology, engineering, and mathematics (STEM) fields.<sup>26</sup> Even putting aside the skills mismatch, it is unlikely that there are enough available workers to fill the openings: The U.S. unemployment rate is currently quite low, and the number of job openings is high.<sup>27</sup>

Dreamers help fill this gap. They all have a high school degree or equivalent—and a large percentage of Dreamers are pursuing or have received college or post-college degrees and therefore qualify for highly-skilled jobs.<sup>28</sup> In 2016, almost a quarter of Dreamers were employed in the educational or health services industry.<sup>29</sup> Many others work in technology, science, and finance,<sup>30</sup> and more still are majoring in STEM fields.<sup>31</sup> *Amici*’s experiences confirm this: For

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<sup>24</sup> See ManpowerGroup, *2016/2017 Talent Shortage Survey: The United States Results* (“ManpowerGroup 2016/2017”), <https://goo.gl/rJTKs6>; see also Rachel Unruh & Amanda Bergson-Shilcock, Nat’l Skills Coalition, *Missing in Action* 3-4 (Feb. 2015), <https://goo.gl/gokfJW>.

<sup>25</sup> ManpowerGroup 2016/2017, *supra* n.23.

<sup>26</sup> President’s Council of Advisors on Sci. and Tech., *Report to the President: Engage to Excel: Producing One Million Additional College Graduates with Degrees in Science, Technology, Engineering, and Mathematics* 1 (Feb. 2012), <https://goo.gl/v2YRVD>.

<sup>27</sup> See NCSL Employment Update, *supra* n.21; U.S. Dep’t of Labor, Bureau of Labor Statistics, *Job Openings and Labor Turnover Survey Highlights August 2017* charts 1 & 2 (Oct. 11, 2017), <https://goo.gl/H28XkL>.

<sup>28</sup> Wong 2017 Results, *supra* n.3, at 7-8.

<sup>29</sup> Ctr. for Am. Progress, *Results of Tom K. Wong, United We Dream, National Immigration Law Center, and Center for American Progress National Survey* 4 (2016), <https://goo.gl/pe2i17>.

<sup>30</sup> *Id.*

example, Microsoft employs 27 Dreamers as “software engineers with top technical skills; finance professionals driving [its] business ambitions forward; and retail and sales associates connecting customers to [its] technologies.”<sup>32</sup> IBM has identified at least 31 Dreamers within the company who work in areas such as software development and client support.<sup>33</sup> One IBM Dreamer provided critical remote technical support to ensure continuity of IBM’s Cloud services when Hurricane Harvey flooded Houston.<sup>34</sup> Lyft employs at least one Dreamer as a software engineer, who serves as one of the tech leads of the team driving critical data projects.<sup>35</sup>

Dreamers with lesser-skilled jobs are also filling positions for which there is an insufficient labor supply. “Among less-educated workers, those born in the United States tend to have jobs in manufacturing or mining, while immigrants tend to have jobs in personal services and agriculture.”<sup>36</sup> The latter industries in particular “face[] a critical shortage of workers every year, as citizens are largely unwilling to engage in these . . . physically demanding . . .

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<sup>31</sup> The UndocuScholars Project, *In the Shadows of the Ivory Tower: Undocumented Undergraduates and the Liminal State of Immigration Reform* 8 (2015), <https://tinyurl.com/y7svqsxr>.

<sup>32</sup> Brad Smith, President and Chief Legal Officer, Microsoft, *DREAMers Make our Country and Communities Stronger* (Aug. 31, 2017), <https://goo.gl/kJYDT3>.

<sup>33</sup> See Tony Romm, *IBM CEO Ginni Rometty Is in D.C. Urging Congress to Save DACA*, Recode.net (Sept. 19, 2017), <https://goo.gl/NQeJUc>; *My American Dream, Minus the Paperwork*, THINKPolicy Blog (Oct. 3, 2017), <https://goo.gl/876JDm>; *I Felt Like a Normal American Kid . . . Then Everything Changed*, THINKPolicy Blog (Oct. 9, 2017), <https://goo.gl/oV9P7h>.

<sup>34</sup> See David Kenny, *Kenny: One Dreamer, Weathering Two Storms*, HOUSTON CHRON. (Dec. 3, 2017), <https://goo.gl/562Pme>.

<sup>35</sup> See Decl. of Emily Nishi ¶ 4, Joint App. Vol. 5 at JA1099, 1103 Dkt. No. 118, *Batalla Vidal v. Trump*, Nos. 18-485, 18-488 (2d Cir. Mar. 16, 2018).

<sup>36</sup> Peri, *supra* n.16.

activities”<sup>37</sup>—even when companies increase wages the maximum amount financially feasible.<sup>38</sup>

In sum, Dreamers are filling jobs that otherwise would remain vacant and are increasing demand for goods and services, which helps to grow the entire economy.

### **C. Enjoining DACA Will Inflict Enormous Harm On Individuals, Companies, And The Economy.**

All of the above benefits—and more—will be lost if DACA is enjoined or struck down. Over the next decade, our country’s GDP will lose between \$350 and \$460.3 billion; and federal tax revenue will drop over \$90 billion.<sup>39</sup>

This economic contraction would result directly from Dreamers’ loss of work authorization. All of the hundreds of thousands of employed Dreamers would lose their jobs. If DACA is enjoined, in the first eight months alone, 300,000 would lose their jobs—an average of 1,700 people losing jobs every single business day.<sup>40</sup> In addition to the obvious harm to Dreamers themselves, the loss of so many workers will have severe repercussions for U.S. companies and workers.

Already, the uncertainty surrounding DACA is impacting Dreamers and, by extension, the companies for which they work. Dreamers now live with the constant threat of job loss and being forced into a life in the shadows, unable to participate in society, and facing forced

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<sup>37</sup> Am. Farm Bureau Fed’n, *Agricultural Labor – Immigration Reform* (Oct. 2016), <https://goo.gl/WUAz3e>; *see also* Clemens & Pritchett, *supra* n.13, at 3 (predicting that increase in low-skill jobs in the care industry will be more than the total increase in the age 25-54 labor force).

<sup>38</sup> *See, e.g.*, Natalie Kitroeff & Geoffrey Mohan, *Wages Rise on California Farms. Americans Still Don’t Want the Job*, L.A. TIMES (Mar. 17, 2017), <https://goo.gl/r1cH9Z>; Octavio Blanco, *The Worker Shortage Facing America’s Farmers*, CNN MONEY (Sept. 29, 2016), <https://goo.gl/ZF2Tdx>.

<sup>39</sup> *See* Nicole Prchal Svajlenka *et al.*, *A New Threat to DACA Could Cost States Billions of Dollars*, Ctr. for Am. Progress (July 21, 2017), <https://goo.gl/7udtFu>; Jose Magana-Salgado, Immigrant Legal Resource Center, *Money on the Table: The Economic Cost of Ending DACA* 4, 6-7 (2016), <https://goo.gl/3ZwGVJ>; *see also* Albright *et al.*, *supra* n.8, at 1.

<sup>40</sup> FWD.us, *The Impact of DACA Program Repeal on Jobs* (2017), <https://goo.gl/gJQHnn>.

removal from the only country they have ever known. The fear for the future that is now a daily part of life for Dreamers and their families affects both physical and mental health.<sup>41</sup> That, in turn, negatively affects employee productivity and performance, illness and absenteeism, accidents, and turnover.<sup>42</sup>

If this Court were to enjoin DACA and thereby permit Dreamers' work authorizations to expire, companies will face an estimated \$6.3 billion in costs to replace Dreamers—if they can even find new employees to fill the empty positions.<sup>43</sup> Companies will forfeit the money they invested in training Dreamers, and will incur costs recruiting and training new employees, who will be less experienced and therefore less productive.<sup>44</sup> These costs are particularly burdensome for small businesses.

The numbers are relevant, but numbers alone do not come close to capturing Dreamers' contributions and the tremendous harm that will result from their loss. People are the heart of every business; and every company's goal is to create teams that work seamlessly together—teams in which colleagues support one another both within and outside the workplace. Ripping Dreamers out of their jobs hurts not only Dreamers, but other employees who lose friends and colleagues, and companies that lose trusted members of their teams.

History shows that forcing Dreamers out of the workforce and into the shadows will also

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<sup>41</sup> See Tiziana Rinaldi & Angilee Shah, *Immigration Limbo Is a 'Tug of Emotions.' It's Also a Mental Health Issue*, PRI's THE WORLD (Aug. 22, 2017), <https://goo.gl/WLXMZ4>; Sarah Elizabeth Richards, *How Fear of Deportation Puts Stress on Families*, THE ATLANTIC (Mar. 22, 2017), <https://goo.gl/qDgeRf>.

<sup>42</sup> See World Health Org. & Int'l Labour Org., *Mental Health And Work: Impact, Issues and Good Practices* 1 (2000), <https://goo.gl/ecH1Ut>; Ortega, *supra* n.23, at 9-10.

<sup>43</sup> See David Bier, *Ending DACA Will Impose Billions in Employer Compliance Costs*, Cato Inst. (Sept. 1, 2017), <https://goo.gl/1FMidk>; see also Magana-Salgado, *supra* n.39, at 4.

<sup>44</sup> Heather Boushey & Sarah Jane Glynn, *There Are Significant Business Costs to Replacing Employees*, Ctr. for Am. Progress (Nov. 16, 2012), <https://goo.gl/ZSmRLq>.

reduce job growth and harm the U.S. economy. After Arizona passed the Legal Arizona Workers Act in 2007, which targeted the use of unauthorized workers, its population of undocumented workers dropped by 40 percent. Economic growth fell, reducing job opportunities: The state's total employment was 2.5 percent less than what it would have been without the law, and its GDP was reduced by an average of 2 percent a year between 2008 and 2015.<sup>45</sup>

Similarly, in 1964, the U.S. expelled Mexican *braceros*, who were previously permitted to work temporarily in the U.S., mostly on farms. A recent study revealed that excluding the Mexican *braceros* "did not affect the wages or employment of U.S. farmworkers."<sup>46</sup> Instead, farms responded by *eliminating* the jobs—often by moving production abroad or going out of business.<sup>47</sup>

Removing Dreamers from the workforce is likely to have the very same negative effect on U.S. employment levels as companies are unable to fill critical jobs. That effect will be exacerbated as Dreamers are forced to shutter businesses that employ other workers and other companies lose the income that has helped drive demand and production of goods and services provided by U.S.-born workers.<sup>48</sup>

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<sup>45</sup> See Bob Davis, *The Thorny Economics of Illegal Immigration*, WALL ST. J. (Feb. 9, 2016), <https://goo.gl/j4dd7J>; see also Sarah Bohn *et al.*, *Do E-Verify Mandates Improve Labor Market Outcomes of Low-Skilled Native and Legal Immigrant Workers?* 17-18, 21, 24-25 (May 2014), <https://goo.gl/7UihsE> (finding that employment rates of U.S.-born men dropped post-LAWA).

<sup>46</sup> Michael A. Clemens, *Does Kicking Out Mexicans Create Jobs?*, POLITICO MAG. (Feb. 15, 2017), <https://goo.gl/XwLj1x>.

<sup>47</sup> *Id.*

<sup>48</sup> Cf. Ben Gitis & Jacqueline Varas, *The Labor and Output Declines From Removing All Undocumented Immigrants*, Am. Action Forum (May 5, 2016), <https://goo.gl/UAt3dJ> (concluding that removing undocumented immigrants from the workforce would cause private sector employment to decline by 4 to 6.8 million workers, would reduce real private sector output by \$381.5 to \$623.2 billion, and would have further negative economic impacts through the loss of consumption, investments, and entrepreneurship).

**II. DACA IS NOT CONTRARY TO SUBSTANTIVE FEDERAL LAW AND DOES NOT VIOLATE THE TAKE CARE CLAUSE.**

In addition to being contrary to the public interest, a preliminary injunction is inappropriate because plaintiffs are not likely to succeed on the merits of their claims.

The individual intervenors have challenged plaintiffs' standing. But even if plaintiffs have standing to bring this action, their challenge to DACA would not succeed on the merits.

DACA is entirely consistent with, and authorized by, federal statutes. The immigration laws specifically charge the secretary of Homeland Security with "establishing national immigration enforcement policies and priorities," 6 U.S.C. § 202(5), and with carrying out the "administration and enforcement of th[e INA] and all other laws relating to the immigration and naturalization of aliens," 8 U.S.C. § 1103(a); *see also* H.R. Rep. No. 111-157, at 8 (2009) ("[R]ather than simply rounding up as many illegal immigrants as possible, which is sometimes achieved by targeting the easiest and least threatening among the undocumented population, DHS must ensure that the government's huge investments in immigration enforcement are producing the maximum return in actually making our country safer.").

DACA is the execution of this statutory authority. Indeed, its grant of deferred action is but one instance of a long-established practice that has been engaged in by Administrations of both parties and expressly recognized by the Supreme Court. *See Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483-85 (1999) (describing "regular practice" of "deferred action").<sup>49</sup> U.S. Presidents since 1956 have implemented formal programs deferring government action to remove individuals present in the United States—thereby enabling over two million

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<sup>49</sup> *See also Arizona v. United States*, 567 U.S. 387, 396 (2012) ("A principal feature of the removal system is the broad discretion exercised by immigration officials."); CHARLES GORDON ET AL., 6-72 IMMIGRATION LAW AND PROC. § 72.03 (Matthew Bender, rev. ed. 1993); Mem. Op. for the Sec'y of Homeland Security and the Counsel to the President, 38 Op. O.L.C. 1, 12-20 (Nov. 19, 2014), <https://www.justice.gov/file/179206/download>.

otherwise-removable aliens to remain temporarily in the country.

In the 1950s, President Eisenhower authorized the admission of (“paroled”) almost 1,000 foreign-born children into the United States; and he and Presidents Kennedy, Johnson, and Nixon later paroled another 600,000 Cubans.<sup>50</sup> In the 1970s and 1980s, the Ford and Carter Administrations granted “extended voluntary departure,” which “temporarily suspend[ed] enforcement” of deportation, to “particular group[s]” of immigrants.<sup>51</sup> The Reagan Administration introduced the “Family Fairness” program, which deferred removal actions against minor children whose parents were in the process of obtaining legal status but who did not themselves qualify for legal status.<sup>52</sup> President George H.W. Bush then extended the program in 1990 to cover qualified spouses.<sup>53</sup> And on at least four additional occasions, immigration officials have extended deferred action to specified classes of individuals.<sup>54</sup>

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<sup>50</sup> See President Dwight Eisenhower, *Statement Concerning the Entry Into the United States of Adopted Foreign-Born Orphans* (Oct. 26, 1956), <https://goo.gl/BkztnZ>; Am. Immigration Council, *Executive Grants of Temporary Immigration Relief, 1956-Present* (Oct. 2014), <https://goo.gl/Q87gqn>.

<sup>51</sup> *Hotel & Rest. Emps. Union, Local 25 v. Smith*, 846 F.2d 1499, 1510 (D.C. Cir. 1988) (en banc); Andorra Bruno *et al.*, CRS, *Analysis of June 15, 2012 DHS Memorandum, Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children* App’x (July 13, 2012), <https://goo.gl/deiGYz>.

<sup>52</sup> Alan Nelson, *Legalization and Family Fairness: An Analysis* (Oct. 21, 1987), in 64 No. 41 INTERPRETER RELEASES 1191 app. I (Oct. 26, 1987).

<sup>53</sup> Mem. from Gene McNary, Comm’r, INS, to Reg’l Comm’rs, *Family Fairness: Guidelines for Voluntary Departure under 8 CFR 242.5 for the Ineligible Spouses and Children of Legalized Aliens* (Feb. 2, 1990), in 67 No. 6 Interpreter Releases 153, app. I, at 164-65 (Feb. 5, 1990).

<sup>54</sup> See, e.g., Mem. from Paul Virtue, INS, *Supplemental Guidance on Battered Alien Self-Petitioning Process and Related Issues* at 3 (May 6, 1997), <https://goo.gl/YSU412>; U.S. Citizenship & Immigration Servs. (“USCIS”), *Interim Relief for Certain Foreign Academic Students Adversely Affected by Hurricane Katrina: Frequently Asked Questions (FAQ)* 1, 7 (Nov. 25, 2005), <https://tinyurl.com/ycw8gjry>; Mem. from Michael D. Cronin, INS, for Michael A. Pearson, INS, *VTVPA Policy Memorandum #2—“T” and “U” Nonimmigrant Visas* (Aug. 30, 2001), <https://goo.gl/8djyjJ>; Mem. from Donald Neufeld, USCIS, *Guidance Regarding Surviving*

None of these programs had explicit statutory authorization. Instead, the power to grant deferral of removal proceedings and other similar discretionary relief has long been recognized to be an exercise of prosecutorial authority that falls squarely within the Executive Branch’s constitutional authority to “take Care that the Laws be faithfully executed,” U.S. Const. art. II, § 3, as confirmed by Congress’s codification of that discretion in the immigration laws, *see* p.12 *supra*. Moreover, Congress has on several occasions recognized the legal authority to grant deferred action by *expressly expanding* deferred action to certain categories of individuals.<sup>55</sup> Given this long historical practice and express congressional recognition, it is plain that the Executive Branch has broad authority to grant deferred action.

In arguing otherwise, plaintiffs attempt to conflate DACA with the program considered by this Court and the Fifth Circuit in earlier litigation—the Deferred Action for Parents of Americans and Lawful Permanent Residents program (“DAPA”)—and argue that DACA is likely to be found unlawful because DAPA was. Pls.’ Op. Br. 21-27. But the Fifth Circuit did not hold that the Executive Branch lacked authority to defer removal with respect to certain undocumented immigrants, even on a categorical basis. Instead, it held that DHS lacked authority to confer “lawful[] presen[ce]” to undocumented immigrants based on their children’s immigration status because the INA already “prescribes how parents may derive an immigration

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*Spouses of Deceased U.S. Citizens and Their Children* (June 15, 2009), <https://goo.gl/SHaCVZ>.

<sup>55</sup> See, e.g., 8 U.S.C. § 1154(a)(1)(D)(i)(II), (IV) (providing that certain aliens who self-petition for relief under the Violence Against Women Act of 1994, Pub. L. No. 103-322, Tit. V, 108 Stat. 1092, are eligible to request “deferred action”); USA PATRIOT Act, Pub. L. No. 107-56, § 423(b), 115 Stat. 272, 361 (2001) (providing that certain family members of lawful permanent residents killed on September 11, 2001, or of citizens killed in combat, are “eligible for deferred action”); National Defense Authorization Act for Fiscal Year 2004, Pub. L. No. 108-136, § 1703(c)-(d), 117 Stat. 1392, 1694-1695 (2003) (same); cf. 49 U.S.C. § 30301 note (providing that certain states may issue driver’s licenses to aliens with “approved deferred action status”).

classification on the basis of their child’s status.” *Texas v. United States*, 809 F.3d 134, 186 (5th Cir. 2015), *aff’d by equally divided Court*, 136 S.Ct. 2271 (2016). The memorandum announcing DACA contains no such language conferring “lawful[] presen[ce]” on Dreamers, and the INA provides no path to legal status for Dreamers; the Fifth Circuit’s rationale is therefore inapplicable.

Plaintiffs’ claim (Pls.’ Op. Br. 28-31) that DACA is unlawful because it confers work authorization is likewise meritless. DACA does not confer work authorization: Eligibility for work authorization (and other benefits) arises through the operation of *other* independent and longstanding regulations and statutes, which plaintiffs do not challenge. *See, e.g.*, 8 C.F.R. § 274a.12 (promulgated 1987) (setting forth classes of aliens eligible for work authorization); 8 U.S.C. § 1324a(h)(3) (enacted 1986) (recognizing authority of Attorney General to authorize to authorize the employment of an alien). And those regulations and statutes make clear that eligibility for the benefits is not granted by DACA, which merely sets forth guidance for granting deferred action (*i.e.*, a deferral of government action to remove the individual from the United States). For example, 8 C.F.R. § 274a(12) lists categories of aliens who are authorized to obtain employment “incident to [their immigration] status.” Notably, aliens who have received deferred action are not among those aliens; instead, aliens who have received deferred action must independently demonstrate “an economic necessity for employment” to receive work authorization. 8 C.F.R. § 274a.12(c)(14).<sup>56</sup>

But in any event, permitting deferred action recipients to obtain work authorization has also long been recognized in U.S. immigration law. A regulation promulgated in the 1980s—

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<sup>56</sup> Indeed, the Fifth Circuit has held that “the agency’s decision to grant voluntary departure and work authorization has been committed to agency discretion by law.” *Perales v. Casillas*, 903 F.2d 1043, 1045 (5th Cir. 1990).

which plaintiffs do not contend is unlawful—provides that individuals who receive deferred action are eligible to apply for work authorization. *See* 8 C.F.R. § 274a.12(c)(14). This regulation codified the already-existing practice and procedure of granting employment authorization to such individuals. *See* 44 Fed. Reg. 43480 (July 25, 1979). And in the almost forty years since, Congress has declined to limit this practice in any way.

To the contrary, in the face of a challenge to the Attorney General’s authority to grant work authorizations to individuals who have been granted deferred action (*see* 51 Fed. Reg. 39385 (Oct. 28, 1986)), Congress ratified the Attorney General’s authority, enacting a law prohibiting employers from hiring unauthorized aliens, but expressly excluded from that category individuals “authorized to be so employed by this chapter *or by the Attorney General.*” 8 U.S.C. § 1324a(h)(3) (emphasis added).<sup>57</sup>

## **CONCLUSION**

For the foregoing reasons, *amici* urge the Court to deny plaintiffs’ motion for a preliminary injunction.

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<sup>57</sup> The disjunctive nature of this provision refutes plaintiffs’ contention that Congress’s articulation of certain categories of aliens who must or may receive employment authorization forecloses the Executive from granting work authorization to any other alien.

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## APPENDIX

### ***LIST OF AMICI***

1. Amazon.com, Inc.
2. A Medium Corporation
3. American Hotel & Lodging Association
4. Adobe Systems Incorporated
5. AdRoll Group
6. Airbnb, Inc.
7. Ampush LLC
8. Asana, Inc.
9. Atlassian Corp. Plc
10. Azavea Inc.
11. Ben & Jerry's Homemade, Inc.
12. Bigtooth Ventures
13. Box, Inc.
14. Braze
15. Brightcove Inc.
16. BSA | The Software Alliance
17. CareZone Inc.
18. Casper Sleep Inc.
19. Castlight Health, Inc.
20. Chegg, Inc.
21. Chobani, LLC
22. Cisco Systems, Inc.

23. Citrix Systems, Inc.
24. Civis Analytics, Inc.
25. ClassPass Inc.
26. Cloudera, Inc.
27. Cloudflare Inc.
28. Codecademy
29. Color Genomics, Inc.
30. The Copia Institute
31. Cummins Inc.
32. DocuSign, Inc.
33. Dropbox, Inc.
34. eBay Inc.
35. Edmodo, Inc.
36. Electronic Arts Inc.
37. EquityZen Inc.
38. Exelon Corp.
39. Facebook, Inc.
40. Foossa LLC
41. General Assembly Space, Inc.
42. Google Inc.
43. Graham Holdings
44. Greenhouse Software, Inc.
45. Gusto

46. Hewlett Packard Enterprise
47. Hilton Worldwide Holdings Inc.
48. Homer Logistics, Inc.
49. Host Hotels & Resorts, Inc.
50. HP Inc.
51. HR Policy Association
52. IBM Corporation
53. IDEO LP
54. Indiegogo, Inc.
55. Intel Corporation
56. IKEA North America Services LLC
57. Kargo
58. Knotel
59. Lam Research Corporation
60. Levi Strauss & Co.
61. Linden Research, Inc.
62. LinkedIn Corporation
63. Lyft, Inc.
64. Mapbox
65. Marin Software Incorporated
66. Marriott International
67. Medidata Solutions, Inc.
68. Microsoft Corporation

- 69. Molecule Software, Inc.
- 70. MongoDB, Inc.
- 71. National Association of Hispanic Real Estate Professionals
- 72. NETGEAR, Inc.
- 73. NewsCred, Inc.
- 74. NIO U.S.
- 75. Niskanen Center
- 76. Oath Inc.
- 77. Okta, Inc.
- 78. Patreon, Inc.
- 79. Postmates Inc.
- 80. Quantcast Corp.
- 81. RealNetworks, Inc.
- 82. Reddit, Inc.
- 83. Redfin Corporation
- 84. Red Ventures
- 85. salesforce.com inc.
- 86. Scopely, Inc.
- 87. ServiceNow, Inc.
- 88. Shutterstock, Inc.
- 89. Singularity University
- 90. The Software and Information Industry Association
- 91. SpaceX
- 92. Spokeo, Inc.

- 93. Spotify USA Inc.
- 94. Square, Inc.
- 95. Squarespace, Inc.
- 96. SurveyMonkey Inc.
- 97. TechNet
- 98. Tesla, Inc.
- 99. Thumbtack, Inc.
- 100. TPG Capital
- 101. TripAdvisor LLC
- 102. Twilio Inc.
- 103. Twitter Inc.
- 104. Uber Technologies, Inc.
- 105. Udacity Inc.
- 106. Upwork Inc.
- 107. Verizon Communications Inc.
- 108. Via Transportation
- 109. Warby Parker
- 110. The Western Union Company
- 111. Work & Co.
- 112. Workday, Inc.
- 113. Yelp Inc.
- 114. Zendesk, Inc.